

consent” before carriers may use CPNI outside the existing service relationship. Prior to soliciting CPNI approval, carriers must provide a detailed disclosure of, among other things, the customer’s rights, the carrier’s obligations and the proposed uses of CPNI.<sup>48</sup> However, the new disclosure rules are significantly different from the disclosure previously required pursuant to *Computer III*. For example, the new rules require carriers to inform customers that their service will not be affected by refusing to sign CPNI waivers whereas BOCs had frequently told customers they might have to change account representatives if they did not grant a waiver. Additionally, under the new rules, notice must be proximate to, but precede, actual approval to use CPNI, a protection not present under the *Computer III* rules. Accordingly, there is no reason to presume that previous approvals were “informed approvals as required under section 222.”

For these reasons, the Commission should make clear that a BOC may not in any instance rely on approvals received under the *Computer III* rules to satisfy section 222’s requirements. BOCs, like all other carriers, must work within the structure of section 222 to obtain the necessary approvals to use CPNI.

**V. THE COMMISSION LACKS AN ADEQUATE RECORD TO IMPOSE COSTLY COMPUTER SYSTEM UPGRADES ON NON-ILEC CARRIERS**

The Commission failed to give competitive carriers adequate notice of the systems modifications announced for the first time in the Commission’s *Second Report and Order*. In the Commission’s *Notice of Proposed Rulemaking* in this docket,<sup>49</sup> the Commission “tentatively concluded that [it] should not now specify [computer system] safeguard

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<sup>48</sup> 47 C.F.R. § 64.2007(f).

<sup>49</sup> *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and*  
(continued...)

requirements for all other telecommunications carriers”; rather, the Commission noted that it would attempt to develop a record on the issue.<sup>50</sup> From this statement in the *NPRM* and based on a record consisting only of five *ex parte* presentations made outside of the Commission’s published filing schedule,<sup>51</sup> the Commission issued rules requiring competitive carriers to reconfigure existing computer systems to make them CPNI compliant.

The Commission’s rules require carriers never before subject to CPNI rules to “develop and implement software systems that ‘flag’ customer service records ... conspicuously ... within a box or comment field within the first few lines of the first computer screen.”<sup>52</sup> Additionally, new Commission rules require that software systems contain an “electronic audit mechanism” that tracks access to customer accounts, including when a customer’s record is opened, by whom, and for what purpose, and carriers must maintain complete audit trails for an entire year.<sup>53</sup>

In announcing these rules, the Commission noted without any supporting documentation that the computer systems requirements “would not be overly burdensome because many carriers maintain such capabilities to track employee use of company resources.”<sup>54</sup> But on a record of only five *ex parte* presentations, CompTel submits that the Commission has not properly noticed or received comment on the types of computer modifications that are appropriate or on the costs associated with computer modifications. Comments on an issue may

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(...continued)

*Other Customer Information*, Notice of Proposed Rulemaking, CC Docket No. 96-115, 11 FCC Rcd 12513 (1996) (“*NPRM*”).

<sup>50</sup> *Id.*, ¶ 36.

<sup>51</sup> *Second Report and Order*, nn. 689 and 692.

<sup>52</sup> *Id.*, ¶ 198.

<sup>53</sup> *Id.*, ¶ 199.

<sup>54</sup> *Id.*

justify changes from notice proposals under the “logical outgrowth standard,” but comments do not substitute for agency notice or cure inadequate notice.<sup>55</sup> Thus, the Commission should either reconsider its computer system upgrade rules, or issue an additional notice to inform adequately affected carriers of the Commission’s intentions and to develop a record on the costs and benefits of requiring carriers to rewrite their computer systems to track information related to CPNI.

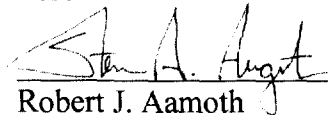
## VI. CONCLUSION

For the foregoing reasons, CompTel submits that the Commission should reconsider its rules issued in the *Second Report Order* and make modifications consistent with the proposals outlined in this petition.

Respectfully submitted,

**COMPETITIVE TELECOMMUNICATIONS  
ASSOCIATION**

By:



Robert J. Aamoth

Steven A. Augustino

**KELLEY DRYE & WARREN LLP**

1200 19<sup>th</sup> Street, N.W., Suite 500

Washington, D.C. 20036

(202) 955-9600

Genevieve Morelli  
Executive Vice President  
and General Counsel  
**COMPETITIVE TELECOMMUNICATIONS  
ASSOCIATION**  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036

Its Attorneys

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<sup>55</sup> *MCI Telecommunications Corp. v. FCC*, 57 F. 3d 1136, 1142 (D.C. Cir. 1995) (stating that interested parties to a proceeding are not required to monitor comments filed by all others in order to get notice of an agency’s proposal).